

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 3, 2010

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-10-2269; TCEQ Docket No. 2009-0492-MSW-E; In Re:
In the Matter of an Enforcement Action Against Jeanette Adams

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **August 23, 2010**. Any replies to exceptions or briefs must be filed in the same manner no later than **September 2, 2010**.

This matter has been designated **TCEQ Docket No. 2009-0492-MSW-E; SOAH Docket No. 582-10-2269**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard R. Wilfong".
Richard R. Wilfong
Administrative Law Judge

RRW/sb
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: JEANETTE ADAMS
SOAH DOCKET NUMBER: 582-10-2269
REFERRING AGENCY CASE: 2009-0492-MSW-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ RICHARD WILFONG**

REPRESENTATIVE / ADDRESS

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JEANETTE ADAMS

SOAH DOCKET NO. 582-10-2269
TCEQ DOCKET NO. 2009-0492-MSW-E

IN THE MATTER OF AN	§	BEFORE THE STATE OFFICE
	§	
ENFORCEMENT ACTION AGAINST	§	OF
	§	
JEANETTE ADAMS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that Jeanette Adams (Ms. Adams) violated 30 TEX. ADMIN. CODE (TAC) § 330.7(a). This provision requires a permit from TCEQ prior to storing or disposing of municipal solid waste (MSW). Specifically, storage or disposal of approximately 3000 scrap tires. For this violation, the ED recommends that the Commission assess an administrative penalty of \$2,500. The ED also recommends that Ms. Adams be ordered to take certain corrective action.¹

Ms. Adams concedes that the scrap tires were on the property in plain sight when she purchased the property. However, Ms. Adams claims that she did not place any of the scrap tires on the property nor has she received any payment or other benefit for storing the tires on the property. Additionally, she claims financial inability to pay any administrative penalty, and both financial and physical inability to remove the scrap tires and dispose of them at an authorized facility.

The Administrative Law Judge (ALJ) concludes that the proposed penalty was correctly calculated in accordance with applicable law and the Commission's September 2002 Penalty Policy (Penalty Policy).² Given that and Ms. Adams' stipulation that the scrap tires are being stored on her property without a permit, the ALJ concludes that Ms. Adams should be assessed

¹ ED Ex. A.

² ED Ex. 7.

an administrative penalty and be required to take corrective action to come into compliance as proposed by the ED. However, considering Ms. Adams' limited financial means and lack of assets, the ALJ recommends that the administrative penalty be reduced to \$1,200 payable at the rate of \$100 per month for 12 consecutive months.

II. JURISDICTION

The hearing convened on July 23, 2010, before ALJ Richard R. Wilfong in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The ED was represented by attorney Xavier Guerra. The Respondent appeared through her attorney Kristy D. Rodgers with Lone Star Legal Aid, by telephone. Jurisdiction was proved as found in Order No. 1 dated February 24, 2010. The Proposed Order contains the necessary findings of fact and conclusions of law to establish jurisdiction without further discussion here.

III. DETAILS OF THE VIOLATIONS

Ms. Adams owns residential property located at 288 Private Road 34611 in Sumner, Lamar County, Texas. During an investigation conducted on March 10, 2009, a TCEQ investigator documented that Ms. Adams violated 30 TAC § 330.7(a), by failing to obtain a permit or other authorization from TCEQ prior to storing or disposing of municipal solid waste (MSW). Specifically, Ms. Adams owns property on which approximately 3000 scrap tires are stored or disposed of without a permit. Ms. Adams received notice of the violation on or about April 7, 2009.

IV. CORRECTIVE ACTIONS

Pursuant to TEX. WATER CODE § 7.073, if a person violates any statute or rule within the Commission's jurisdiction, the Commission may order the person to take corrective action. The

ED recommends that Ms. Adams be required, upon the effective date of the Commission's order, to: (1) immediately cease disposing of any additional MSW on her property; (2) within 30 days, remove all MSW and dispose of the waste at an authorized facility; and (3) within 45 days, submit written certification and detailed documentation, including photographs, receipts, and other records demonstrating compliance with the required corrective action.

V. PENALTIES

The ED showed that the disputed administrative penalty of \$2,500 was properly calculated. TCEQ Enforcement Coordinator Keith Frank explained the calculations, and Ms. Adams did not dispute his qualifications. Ms. Adams offered no evidence or argument to show that the ED's calculation was incorrect.

The scrap tire storage or disposal violation is major and programmatic because 100% of the requirements of 30 TAC § 330.7(a) were not met. Additionally, Ms. Adams is a major source, as defined by the Penalty Policy, because she stored more than 500 tires.³ For a major programmatic violation by a major source, the base penalty for each violation event is 25% of the maximum \$10,000 penalty, or \$2,500. There was one violation event. Thus, the amount of the penalty was \$2,500.⁴ However, based on the ED's review of documentation submitted by Ms. Adams in support of her inability to pay, the ED does not dispute that the proposed administrative penalty should be reduced.

The ALJ concludes that the penalty was properly calculated in accordance with the Commission's Penalty Policy. However, in view of Ms. Adams' financial inability to pay the ALJ agrees with the ED that the penalty should be reduced and recommends that the Commission allow Ms. Adams to pay an administrative penalty of \$1,200 payable at the rate of

³ ED Ex. 1 and 7.


⁴ ED Ex. A, Attachment A.

\$100 per month for 12 consecutive months, provided Ms. Adams complies with the corrective action discussed above.

VI. SUMMARY

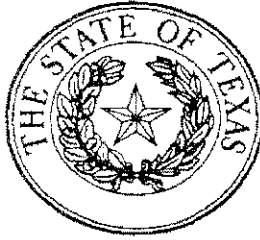
The ALJ recommends that the Commission adopt the attached proposed order, finding that Ms. Adams committed the alleged violation and requiring her: (1) to pay an administrative penalty of \$1,200 in monthly installments of \$100 for 12 consecutive months; and (2) to take the corrective action necessary to bring the property into compliance.

SIGNED August 3, 2010.



RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST AND
ORDERING CORRECTIVE ACTION BY
JEANETTE ADAMS;
TCEQ DOCKET NO. 2009-0492-MSW-E
SOAH DOCKET NO. 582-10-2269**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's First Amended Preliminary Report and Petition recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Jeanette Adams (Ms. Adams). A Proposal for Decision (PFD) was presented by Richard R. Wilfong, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the Petition on July 23, 2010, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Jeanette Adams (Ms. Adams) owns residential property at 288 Private Road 34611 in Sumner, Lamar County, Texas (Property).

2. During an investigation conducted on March 10, 2009, a TCEQ investigator documented that Ms. Adams violated 30 Tex. Admin. Code (TAC) § 330.7(a), by failing to obtain a permit or other authorization from TCEQ prior to storing or disposing of municipal solid waste (MSW) (approximately 3000 scrap tires) on her Property.
4. On or about April 7, 2009, Ms. Adams received notice of violation concerning the above from the Executive Director (ED) of the TCEQ.
5. On November 5, 2009, the ED filed the Executive Director's Preliminary Report and Petition (EDPRP), in accordance with TEX. WATER CODE ANN. (Water Code) § 7.054, alleging that Ms. Adams violated 30 TAC § 330.7(a).
6. In the EDPRP, the ED recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$2,500 against Ms. Adams for the alleged violation. The ED also recommended that the Commission order Ms. Adams to take certain corrective action.
7. On December 1, 2009, Ms. Adams filed a request for hearing concerning the EDPRP and the matter was referred to SOAH for hearing.
8. On January 25, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Ms. Adams and her attorney with Lone Star Legal Aid in Paris, Texas.
10. On February 24, 2010, a joint motion was filed to: (1) waive appearance at the preliminary hearing; (2) admit into evidence ED Exhibits A through D to show jurisdiction; and (3) to approve an agreed procedural schedule.

11. In Order No. 1 issued on February 24, 2010, the ALJ ordered that ED Exhibits A through D were admitted to show jurisdiction and that the evidentiary hearing on the merits would convene on July 23, 2010. A copy of that Order was served on all parties.
12. On July 23, 2010, the ALJ convened the hearing on the merits. The ED and Ms. Adams appeared through their representatives. The Office of Public Interest Counsel did not appear or seek a continuance.
13. At the hearing on the merits, Ms. Adams agreed that she had committed the above violation, but disputed the proposed penalty of \$2,500.
14. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
15. Ms. Adams' Property is a major source, as defined by the Penalty Policy, because more than 500 tires were stored.
16. For each major programmatic violation by a major source, the Penalty Policy sets a base penalty of 25% of the maximum \$10,000 penalty, or \$2,500.
17. The tire storage or disposal violation is major and programmatic because 100% of the requirements of 30 TAC § 330.7(a) were not met. There was one violation event; thus, the proposed penalty was \$2,500.

II. CONCLUSIONS OF LAW

1. Under Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Water Code or of the Health & Safety Code

within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.

2. Under Water Code § 7.052, a penalty may not exceed \$10,000 per violation, per day for the violation at issue in this case.
3. Additionally, the Commission may order the violator to take corrective action. Water Code § 7.073.
4. As required by Water Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Ms. Adams was notified of the EDPRP and of the opportunity to request a hearing on the alleged violation or the penalty or corrective action proposed therein.
5. As required by TEX. GOV'T CODE ANN. (Gov't Code) §§ 2001.051(1) and 2001.052; Water Code § 7.058; 1 TAC § 155.401, and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6(b)(3), Ms. Adams was notified of the hearing on the alleged violation and the proposed penalty and corrective action.
6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Gov't Code ch. 2003.
7. Based on the above Findings of Fact and Conclusions of Law, Ms. Adams violated 30 TAC § 330.7(a).
8. In determining the amount of an administrative penalty, Water Code § 7.053 requires the Commission to consider several factors, including:

- The violation's impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - Any other matters that justice may require.
9. Based on the above Findings of Fact, the factors set out in Water Code § 7.053, and the Commission's Penalty Policy, the Executive Director (ED) correctly calculated the penalty for the alleged violation and an administrative penalty of \$2,500 is justified.
10. Based on the above Findings of Fact, Ms. Adams should be required to take the corrective action measures that the ED recommends.

III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Beginning 30 days after the effective date of this Commission Order, Jeanette Adams shall pay an administrative penalty in the amount of \$1,200 at the rate of \$100 each month for 12 consecutive months for violation of 30 TAC § 330.7(a). The payment of this administrative penalty and the performance of all corrective action listed herein will completely resolve the violation set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Checks rendered to pay penalties imposed by this

Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Jeanette Adams; TCEQ Docket No. 2009-0492-MSW-E; Enforcement ID No. 37431" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Within 30 days of the effective date of this Order, Ms. Adams shall remove and dispose of all scrap tires on her Property at an authorized facility.
3. Within 45 days after the effective date of the Commission Order, Ms. Adams shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4. Ms. Adams shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Michael Brashear, Waste Section Manager
Texas Commission on Environmental Quality
Tyler Regional Office
2916 Teague Drive
Tyler, Texas 75701-3734

5. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Ms. Adams if the ED determines that Ms. Adams has not complied with one or more of the terms or conditions in this Commission Order.
6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
7. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Gov't Code § 2001.144.
8. The Commission's Chief Clerk shall forward a copy of this Order to Ms. Adams.
9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission